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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**
17

18 **IN RE PLUM BABY FOOD LITIGATION**

19 This Document Relates To: All Actions

Master File No. 4:21-cv-00913-YGR

Hon. Yvonne Gonzalez Rogers

**DECLARATION OF KERI E. BORDERS
IN SUPPORT OF DEFENDANT PLUM,
PBC'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF ITS MOTION
TO DISMISS OR IN THE
ALTERNATIVE, TO STAY**

Date: January 11, 2022
Time: 2:00 p.m.
Courtroom: 1

*[Motion to Dismiss or in the Alternative, to
Stay and [Proposed] Order Filed Concurrently
Herewith]*

DECLARATION OF KERI E. BORDERS

I, Keri E. Borders, hereby declare and state under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the State of California and one of the attorneys of record for defendant Plum, PBC (also erroneously sued as Plum, Inc.) (collectively, “Plum”) in this action. This declaration is based on my involvement with this action and my personal knowledge of the facts recited below. I am submitting this declaration in support of Plum’s request for judicial notice in connection with its motion to dismiss, or in the alternative, to stay the First Amended Consolidated Class Action Complaint (“FACC”).

2. Attached hereto as **Exhibit A** is a true and correct copy of the Healthy Babies Bright Futures Report accessible through the citation and hyperlink in the FACC at ¶ 10 fn. 5, available at https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf. A copy of this document was downloaded via the above-listed hyperlink as part of Mayer Brown’s work on this matter.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Food and Drug Administration (“FDA”) document, *Closer to Zero: Action Plan for Baby Foods*, dated April 8, 2021 and available at <https://www.fda.gov/food/metals-and-your-food/closer-zero-action-plan-baby-foods>. A copy of this document was downloaded via the above-listed hyperlink as part of Mayer Brown’s work on this matter.

4. Attached hereto as **Exhibit C** is a true and correct copy of the FDA Constituent Update dated February 16, 2021, available at <https://www.fda.gov/food/cfsan-constituent-updates/fda-response-questions-about-levels-toxic-elements-baby-food-following-congressional-report>. A copy of this document was downloaded via the above-listed hyperlink as part of Mayer Brown’s work on this matter.

5. Attached hereto as **Exhibit D** is a true and correct copy of the FDA Constituent Update dated March 5, 2021, available at <https://www.fda.gov/food/cfsan-constituent-updates/fda-letter-industry-chemical-hazards-including-toxic-elements-food-and-update-fda-efforts-increase>. A copy of this document was downloaded via the above-listed hyperlink as part of Mayer Brown’s work on this matter.

1 6. Attached hereto as **Exhibit E** is a true and correct copy of the FDA Constituent
2 Update dated April 8, 2021, available at [https://www.fda.gov/food/cfsan-constituent-updates/fda-](https://www.fda.gov/food/cfsan-constituent-updates/fda-shares-action-plan-reducing-exposure-toxic-elements-foods-babies-and-young-children)
3 [shares-action-plan-reducing-exposure-toxic-elements-foods-babies-and-young-children](https://www.fda.gov/food/cfsan-constituent-updates/fda-shares-action-plan-reducing-exposure-toxic-elements-foods-babies-and-young-children). A copy
4 of this document was downloaded via the above-listed hyperlink as part of Mayer Brown's work
5 on this matter.

6 7. Attached hereto as **Exhibit F** is a true and correct copy of the FDA Constituent
7 Update dated October 8, 2021, available at [https://www.fda.gov/food/cfsan-constituent-](https://www.fda.gov/food/cfsan-constituent-updates/fda-announces-first-closer-zero-action-plan-public-meeting)
8 [updates/fda-announces-first-closer-zero-action-plan-public-meeting](https://www.fda.gov/food/cfsan-constituent-updates/fda-announces-first-closer-zero-action-plan-public-meeting). A copy of this document
9 was downloaded via the above-listed hyperlink as part of Mayer Brown's work on this matter.

10 8. Attached hereto as **Exhibit G** is a true and correct copy of Environmental
11 Defense Fund, *Lead in Food: A Hidden Health Threat* (June 15, 2017), available at
12 www.edf.org/sites/default/files/edf_lead_food_report_final.pdf. This document is cited at FACC
13 at Ex. 1 at p. 21, n.50, and a copy of this document was downloaded via the above-listed
14 hyperlink as part of Mayer Brown's work on this matter.

15 9. Attached hereto as **Exhibit H** is a true and correct copy of Consumer Reports,
16 *Heavy Metals in Baby Food: What You Need to Know* (August 16, 2018), available at
17 <https://www.consumerreports.org/food-safety/heavy-metals-in-baby-food/>. This document is
18 cited at ¶ 195 n.97 and a copy of this document was downloaded via the above-listed hyperlink
19 as part of Mayer Brown's work on this matter.

20 10. Attached hereto as **Exhibit I** is a true and correct copy of FDA's Guidance for
21 Industry: Action Level for Inorganic Arsenic in Rice Cereals for Infants, available at
22 <https://www.fda.gov/media/97234/download>. A copy of this document was downloaded via the
23 above-listed hyperlink as part of Mayer Brown's work on this matter.

24 11. Attached hereto as **Exhibit J** is a true and correct copy of FDA's Press Statement
25 dated April 8, 2021, available at [https://www.fda.gov/news-events/press-announcements/fda-](https://www.fda.gov/news-events/press-announcements/fda-releases-action-plan-reducing-exposure-toxic-elements-foods-babies-young-children)
26 [releases-action-plan-reducing-exposure-toxic-elements-foods-babies-young-children](https://www.fda.gov/news-events/press-announcements/fda-releases-action-plan-reducing-exposure-toxic-elements-foods-babies-young-children). A copy of
27 this document was downloaded via the above-listed hyperlink as part of Mayer Brown's work on
28 this matter.

12. Attached hereto as **Exhibit K** is a true and correct copy of Consumer Reports, *Consumer Reports tests juices for arsenic and lead* (November 30, 2011), available at <https://www.consumerreports.org/cro/news/2011/11/consumer-reports-tests-juices-for-arsenic-and-lead/>. This document is cited in the HBBF Report accessible through the citation and hyperlink in the FACC at ¶ 10 fn. 5., and a copy of this document was downloaded via the above-listed hyperlink as part of Mayer Brown's work on this matter.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

This declaration is executed on the 18th day of October, 2021, at Los Angeles, California.

By: /s/ Keri E. Borders
Keri E. Borders